

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

AMENDS 312 IAC 8, GOVERNING)	Administrative Cause
ACTIVITIES ON DEPARTMENT OF)	Number: 13-116P
NATURAL RESOURCES PROPERTIES)	
)	LSA Document #13-294(F)

**REPORT ON RULE PROCESSING, PUBLIC HEARINGS, AND HEARING OFFICER
ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ADOPTION**

1. RULE PROCESSING

For consideration, are proposed amendments to 312 IAC §8, which provides standards for the use of properties of the Department of Natural Resources (“DNR”). The proposed amendment to 312 IAC §8-2-5(1) would authorize possession and consumption of alcohol on the licensed premises of a pavilion at Indiana Dunes State Park. 312 IAC §8-2-5(6) is added to prohibit the possession and consumption of alcohol at a designated youth tent area within a DNR property. An amendment to 312 IAC §8-2-6 would allow the release of a pet or service animal from its leash where authorized by the DNR. 312 IAC §8-2-8 is proposed to be amended to clarify that a person using a trail on a DNR property may leave the trail if participating in an activity authorized by a DNR license.

The Commission gave preliminary adoption to the proposed amendments to 312 IAC 8 on September 18, 2012. As reported in the pertinent portions of the September 18 minutes:

Consideration of preliminary adoption of amendments to 312 IAC 8-2-5 to authorize the sale and consumption of alcoholic beverages at the pavilion in Indiana Dunes State Park in implementation of P.L. 71-2012; Administrative Cause No. 12-075P

John Davis introduced this item. He said current property rules prohibit alcohol at Indiana Dunes State Park, and the proposed amendments would allow alcohol at the park’s Pavilion. At its May 15, 2012 meeting, the Commission authorized the Department to enter negotiations with a potential concessionaire for a restaurant, snack bar, and service area in the Pavilion. “We believe it will be a tremendous place. It’s going to be the only place on the beach to have a meal in Indiana and would have a

beautiful view of Chicago.” He said the Legislature this year “amended the Indiana Code to allow concessionaires at state properties, at the Dunes, to serve alcohol. We don’t allow alcohol anywhere else at the Dunes. That has been long-standing.”

The Vice Chair asked for clarification regarding whether the proposed amendment at 312 IAC 8-2-5(6), “a designated youth tent area” applies to all of the Department’s park facilities.

John Bergman explained that youth tent areas “are predominately for use by persons 18 years of age or younger—Boy Scouts, church camps, and such other groups. We think it’s an area where we probably need to address the alcohol use.” With the online reservation system, “we have been finding that older groups have been making reservations for these areas. That wasn’t our intent. We think that by implementing this rule, when they see that when they go to make a reservation that they can’t have alcohol, they will be less likely to make that reservation.” He added the amendment would be a “good rule to have for a youth tent area”.

John Davis introduced Garry Traynham, an Assistant at the Indiana Dunes National Lakeshore, “our neighbor and partner along Lake Michigan.... Garry has been there a long time and we appreciate his partnership.” Traynham thanked the Commission and said he enjoyed working with the Department.

Donald Ruch moved to give preliminary adoption of amendments to 312 IAC 8-2-5 to authorize the sale and consumption of alcoholic beverages at the pavilion in Indiana Dunes State Park. The amendments also restate a prior preliminary adoption that would prohibit alcohol at youth tent areas. RT Green seconded the motion. Upon a voice vote, the motion carried.

The “Notice of Intent” to adopt amendments to 312 IAC 8 was posted to the INDIANA REGISTER at 20130703-IR-312130294NIA on July 3, 2013. The notice identified John Bergman as the “small business regulatory coordinator” for purposes of IC §4-22-2-28.1.

As specified by the Executive Order that then applied, proposed fiscal analyses of the rule proposal, the proposed rule language and a copy of the posted Notice of Intent were submitted to the Office of Management and Budget and the Administrative Rules Oversight Committee on August 22, 2013. In a letter dated September 26, 2013, Brian E. Bailey, Director, Office of Management and Budget, recommended the proposed rule amendments be approved.

On October 8, 2013, the Division of Hearings submitted the rule proposal to the Legislative Services Agency, along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”). The Notice of Public Hearing, including the Justification Statement (IC §4-22-2-24(d)(3)), was submitted to the Legislative Services Agency

on October 11, 2013. On October 23, 2013, the following were posted to the INDIANA REGISTER: the text of the proposed rule at 20131023-IR-312130294PRA; the notice of public hearings at 20131023-IR-312130294PHA; and the Economic Impact Statement at 20131023-IR-312130294EIA. Legislative Services Agency provided an "Authorization to Proceed" on October 11, 2013. The Division of Hearings caused a notice of public hearings to be published in the Indianapolis *Daily Star*, a newspaper of general circulation in Marion County, and in *The Times of Northwest Indiana*, a newspaper of general circulation in Porter County, on October 21, 2013. In addition, the Commission's rulemaking docket (<http://www.in.gov/nrc/2377.htm>) was updated to include links to the published rule proposal, notice of the public hearing, and other information required by IC §4-22-2-22.5.

The Statement Concerning Rules Affecting Small Businesses (the "EIS"), as required under IC § 4-22-2.1-5, and submitted by the Small Business Regulatory Coordinator, indicates:

**Economic Impact Statement
LSA Document #13-294**

**IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses
Estimated Number of Small Businesses Subject to this Rule:**

The amendment to [312 IAC 8-2-8](#) would permit more groups to access the properties for specific uses that might have previously been denied, such as geocaching. No small businesses are involved in these types of activities. No small business would be affected by this rule.

[312 IAC 8-2-6](#) is proposed to be amended to provide for a Dog Park at Fort Harrison State Park. There are no known private dog parks within Marion County. There is one regional park in Fishers that would be affected by the creation of this rule allowing for dogs to remain unleashed within the Dog Park at the state park. The business in Fishers was contacted and is supportive of the creation of the dog park this rule amendment would allow. The Department believes no known small business would be subject to this rule in an adverse way. More than 10 dog parks in Metropolitan Indianapolis are operated by governmental agencies.

Amendments to [312 IAC 8-2-5](#) would authorize "retail sale of alcoholic beverages for consumption on the premises of a pavilion located within Indiana Dunes State Park if the lessee or concessionaire applies for and secures the necessary permits under [IC 7.1](#)." A lessee or concessionaire would be a private business operation to operate the pavilion for a restaurant and rental for group sales that would allow for alcohol to be served. There is no comparable business from Chicago to Southwest Michigan that serves food and alcohol in a restaurant within or on Lake Michigan. No impacts should be affected, to other "like" businesses along the Lake Michigan waterfront within 25 miles of the state park, by allowing alcohol to be served in this facility.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

Regarding amendments to [312 IAC 8-2-5](#), a selected vendor leasing the Dunes Pavilion located at the Indiana Dunes State Park would be required to operate a private business under current statutes covering all reporting and accounting for current small business operations in the state of Indiana serving alcohol. It is unknown what the timeline will be for compliance, but it is expected to be compatible with any other business of this type that wishes to open and operate a retail restaurant serving alcohol as part of the retail

operation. The state is not asking for any additional reporting requirements outside current requirements for businesses serving alcohol in Indiana.

The proposed amendments to [312 IAC 8-2-6](#) and [312 IAC 8-2-8](#) would not impose any annual reporting, record keeping, or other administrative costs to small business.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

It is not expected that the amendment to [312 IAC 8-2-8](#) would cause a positive or negative outcome to as to economic impacts. However, an increase in use of Department lodging and eateries might occur as more groups participating in geocaching activities with the use Department properties on a more regular basis.

There is no direct economic impact to a small business with proposed amendment to [312 IAC 8-2-6](#). The Department anticipates some small business opportunities would arise in the way of advertising and retail sales with the facility through a license concession contract to sell merchandise.

It is estimated that the amendment to [312 IAC 8-2-5](#) would allow for a substantial increase in business for a retail restaurant to operate in the pavilion of the state park, with alcohol being served as part of retail sales within the restaurant. No other restaurant is currently situated on Lake Michigan between Chicago and Southwest Michigan that serves alcohol within an eating establishment. The Department believes there would be a significant positive impact to the business operator not currently available with this coastal region of Lake Michigan.

Justification Statement of Requirement or Cost:

The lease allowing for alcohol to be served would require a fee to the state of Indiana as part of a license/lease. Normally, these fees do not exceed 10% of revenue. Final negotiations between the Department and the potential leasee would determine the cost of operating the business and the revenue generated with alcohol being served that will go to the state of Indiana. The amendment to [312 IAC 8-2-5](#) to permit alcohol would not adversely impact a business but would instead provide a business opportunity that does not currently exist in the state park.

No cost is expected on small businesses regarding amendments to [312 IAC 8-2-6](#) or [312 IAC 8-2-8](#).

Regulatory Flexibility Analysis of Alternative Methods:

The amendment to [312 IAC 8-2-5](#) would lessen the costs to the public by authorizing a business in Indiana Dunes State Park that can serve food and alcoholic beverages. The opportunity does not currently exist in the state park. A potential small business operator would still need to comply with laws dealing with sales of alcohol within a retail restaurant operation.

Because there was no additional requirement or cost resulting from proposed amendment to 312 IAC §8, the proposal was not submitted to the Indiana Economic Development Commission.

2. PUBLIC HEARING

Public hearings were convened as scheduled on November 20, 2013 in Indianapolis and on November 22, 2013 at the Indiana Dunes State Park, Nature Center, Chesterton. Marian England, John Bergman, and Brandt Baughman from the DNR's Division of State Parks and Reservoirs attended the public hearing held in Indianapolis. Brandt Baughman, Property Manager at Indiana Dunes State Park, also attended the public hearing held at the state park. No member of the public attended, and no comments were received by regular mail. The comment period was closed on Midnight, November 25, 2013.

One comment was received through the Commission's rule docket system. On August 22, 2013, Angela Drook, from Kosciusko County, commented favorably, and stated, "I support the proposed changes."

3. HEARING OFFICER ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ADOPTION

The recommended amendments are mostly if not entirely housekeeping measures. They adjust for statutory changes, accommodate to current practices, and correct cross-references.

312 IAC §8-2-5(1) now prohibits the possession or consumption of alcohol at particular DNR properties, including Indiana Dunes State Park. For Indiana Dunes State Park, the ban was established by rule in 1990 following a series of enforcement incidents. Former 310 IAC §5-1-6(u) [*repealed and recodified* at 312 IAC §8-2-5 in 1998]. The public hearing to consider the ban was conducted in Chesterton, was well-attended, and received local media coverage. Most commentators were supportive. See Administrative Cause No. 89-066P (LSA Document #89-100).

P.L. 71-2012, SEC 10, amended IC §14-18-2-3 to authorize the “retail sale of alcoholic beverages for consumption on the licensed premises of a pavilion located within Indiana Dunes State Park, if the lessee or concessionaire applies for and secures” the necessary permits required under IC §7.1. From a legal perspective, the statutory amendment to authorize alcohol sales and consumption in IC §14-18-2-3 superseded or at least curbed the exercise of rule authority in 312 IAC §8-2-5(1). The DNR is negotiating with a potential vendor as part of a building lease to operate a restaurant in the state park pavilion. The sale and consumption of alcohol would be restricted to the pavilion premises.

Because of the interest in the ban in 1990, in Northwest Indiana and particularly in Porter County, a public hearing in Chesterton was thought warranted to respond to questions and to consider any refinements suggested to relaxation of the ban as set forth in the rule proposal. But perhaps because the statutory authorization was unequivocal, because the 1990 ban was successful in addressing enforcement incidents at Indiana Dunes State Park, or for both reasons, the proposed amendment did not generate public interest.

Youth tents are intended to support activities where young people can participate in activities geared to their age groups. The absence of a site prohibition on alcohol has meant adults, who wished to consume alcohol, would sometimes seek reservations. The result could be an

atmosphere that was inconsistent with the intent of youth tents. The addition of 312 IAC §8-2-5(6) would help conform the management of youth tent areas to the agency intent.

As currently written, 312 IAC §8-2-6 requires that a person on a DNR property accompanied by a pet or service animal must keep the animal caged or on a leash of not more than six feet long and must attend the animal at all times. The proposed amendments to this section were in anticipation of the opening of the Dog Park at Fort Harrison State Park, which was dedicated in mid-November. The amendment to 312 IAC §8-2-6 would allow a person to release a pet or service animal within this the dog park or another area as authorized by the DNR.

As required by 312 IAC §8-2-8(d), a person using a trail on a DNR property must stay on the trail. According to the DNR's cost-benefit analysis, the DNR "wishes to modify [this rule section] to allow recreational activities that go 'off trail' within current licenses and policies established for that use..." The proposed amendments are partly in response to an increased use of DNR properties and the Commission's nonrule policy document, GEOCACHING ON DNR PROPERTIES, Information Bulletin #46 (Third Amendment), posted in the *Indiana Register* at as 20120926-IR-312120547NRA. The nonrule policy document provides guidance for the management of geocaching, a licensed activity, on certain DNR properties. In addition, the amendment would harmonize with the practice of allowing mushroom hunting and similar activities to occur off-trail. Regarding the proposed amendments, the DNR concluded in its analyses: "The benefits to this rule change will mostly be an increase in recreational activity on DNR properties. This may have a positive fiscal impact, but most likely will be minimal. The benefits are an increased user group base [that sees] the value in outdoor activities that allow for less restrictive use policies".

The proposed amendments to 312 IAC §8 appear to be appropriate and are recommended for consideration as to final adoption as published in the *Indiana Register*, and as attached in Exhibit A.

Dated: December 4, 2013

Stephen L. Lucas
Hearing Officer

EXHIBIT A

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #13-294(F)

DIGEST

Amends 312 IAC 8-2-5 to authorize possession and consumption of alcohol on the licensed premises of a pavilion authorized by IC 14-18-2-3 and to prohibit possession and consumption of alcohol at a designated youth tent area. Amends 312 IAC 8-2-6 to allow release of a pet or service animal from its leash where authorized by the department. Amends 312 IAC 8-2-8 to clarify a person using a trail on a department property may leave the trail if participating in an activity authorized by a department license. Effective 30 days after filing with the Publisher.

312 IAC 8-2-5; 312 IAC 8-2-6; 312 IAC 8-2-8

SECTION 1. 312 IAC 8-2-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-5 Alcoholic beverages

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14-18-2-3

Sec. 5. A person must not possess or consume an alcoholic beverage at any of the following locations:

- (1) Indiana Dunes State Park, **except on the licensed premises of a pavilion authorized by IC 14-18-2-3.**
- (2) Redbird State Recreation Area.
- (3) Interlake State Recreation Area.
- (4) A swimming beach or pool.
- (5) A shooting range.
- (6) A designated youth tent area.**

(Natural Resources Commission; 312 IAC 8-2-5; filed Oct 28, 1998, 3:32 p.m.: 22 IR 740, eff Jan 1, 1999; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315; readopted filed Mar 25, 2010, 2:58 p.m.: 20100421-IR-312100037RFA; filed Aug 18, 2011, 11:38 a.m.: 20110914-IR-312100668FRA; errata filed Oct 6, 2011, 2:38 p.m.: 20111019-IR-312110588ACA)

SECTION 2. 312 IAC 8-2-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-6 Animals brought to DNR properties

Authority: IC 14-10-2-1; IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14; IC 35-46-3-11.5

Sec. 6. (a) A person who possesses a pet or service animal must:

- (1) **except as provided in subsection (b),** keep the animal caged or on a leash not more than six (6) feet long; and
- (2) attend the animal at all times.

~~This~~ **(b)** Subsection **(a)(1)** does not apply:

- (1) where the DNR authorizes a person to release a pet or service animal from its leash; or
(2) to activities governed by section ~~3(e)~~ 3(g) of this rule.

~~(b)~~ (c) If a pet or service animal appears likely to:

- (1) endanger a person or property; or
(2) create a nuisance;

the owner may be required to immediately remove the pet or service animal from a DNR property.

~~(e)~~ (d) A person must not take or possess a cat, a dog, or other pet to a:

- (1) swimming beach;
(2) swimming pool enclosure;
(3) rental facility; or
(4) public building.

A service animal used by a person with a disability is exempted from this subsection.

~~(d)~~ (e) A person must acquire an annual or daily horse tag or receipt for each horse that is brought into a designated DNR property from April 1 through November 30. The tag or receipt must be:

- (1) kept in the person's immediate possession; and
(2) provided to an authorized representative upon request.

~~(e)~~ (f) A person must not do the following:

- (1) Allow livestock or domesticated animals to enter or remain upon a DNR property. These animals may be removed by the department and disposed or held at the owner's expense.
(2) Release an animal on DNR property except under license issued by an authorized representative under this subdivision. To receive a license, a person must demonstrate the animal is healthy and unlikely to endanger public safety or the environment. A person in violation of this subdivision ~~shall~~ must reimburse the department for any expenses reasonably incurred.

~~(f)~~ (g) For purposes of this section, a pet is not a service animal under IC 35-46-3-11.5. (*Natural Resources Commission; 312 IAC 8-2-6; filed Oct 28, 1998, 3:32 p.m.: 22 IR 741, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 554, eff Jan 1, 2000; filed Nov 30, 2001, 10:55 a.m.: 25 IR 1074, eff Jan 1, 2002; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3715; filed Sep 19, 2003, 8:14 a.m.: 27 IR 457; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315; filed Jun 29, 2007, 2:32 p.m.: 20070725-IR-312060333FRA; readopted filed Mar 25, 2010, 2:58 p.m.: 20100421-IR-312100037RFA*)

SECTION 3. 312 IAC 8-2-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-8 Vehicles, trails, boats, and aircraft

Authority: IC 14-10-2-1; IC 14-10-2-4; IC 14-11-2-1; IC 14-19-1-1

Affected: IC 14-19-1-0.5; IC 14-22-11-1

Sec. 8. (a) A person must not operate a vehicle:

- (1) at a speed greater than:
 (A) thirty (30) miles per hour on straight, open stretches of road; or
 (B) fifteen (15) miles per hour on steep grades or curves or where posted; or
(2) except as provided in section 17 of this rule, other than on a public road.

(b) A person must not park:

- (1) a vehicle;

(2) a boat; or
 (3) associated equipment;
 except at a site designated by the department.

(c) A person must not operate a motorized cart on a DNR property except as follows:

(1) The person must demonstrate both of the following:

(A) The person holds a valid driver's license.

(B) The person:

(i) is at least sixty-five (65) years of age that is evidenced by the valid driver's license; or

(ii) has a disability, as defined by the federal Social Security Administration guidelines (42 U.S.C. 416), that is evidenced by documentation from the Social Security Administration.

(2) A person must not operate a motorized cart other than within a campground.

(3) A motorized cart must, if operated between the hours of sunset and sunrise, have a lamp on the:

(A) front exhibiting a white light visible at least five hundred (500) feet ahead of the motorized cart;
 and

(B) rear exhibiting a red light visible at least five hundred (500) feet behind the motorized cart.

(4) A restriction applicable to the operation, parking, or other use of a vehicle under this section also applies to a motorized cart.

(5) As used in this subsection, "motorized cart" has the meaning set forth in IC 14-19-1-0.5.

(d) **Unless an activity is licensed or exempted from licensure under this rule, a person must not do the following:**

(1) Leave the designated pathway for a trail while moving cross-country. ~~on a trail must remain on the designated pathway for the trail. A person must not:~~

(2) Except on a trail designated for the purpose:

~~(1)~~ (A) hike;

~~(2)~~ (B) bike;

~~(3)~~ (C) ski;

~~(4)~~ (D) horseback ride; or

~~(5)~~ (F) operate an off-road vehicle or snowmobile.

~~except on a trail designated for the purpose. A person must not~~ **(3) Except where designated by the department, ride, lead, drive, or hitch an animal. ~~except where designated by the department.~~**

(e) A person must not launch, dock, or moor a boat, except:

(1) for approved periods; and

(2) at sites designated by the department for those purposes.

(f) A person must not:

(1) leave a boat unattended in a courtesy dock provided by the department; or

(2) moor a boat at a designated group dock or mooring post unless the boat exhibits a valid mooring permit.

(g) A person must not operate or maintain a boat on a lake unless the person does each of the following:

(1) Operates the boat according to any horsepower or speed restrictions applicable to the lake.

(2) Except as provided in subdivisions (3) and (6), obtains and displays a valid annual boat lake permit as follows:

(A) Purchase from the department a boat lake permit under a fee schedule approved by the commission.

(B) Affix the permit in a visible location on the forward half of the boat.

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(3) Except as provided in subdivision (6), for a motorboat, obtains and displays a valid annual motorboat lake permit as follows:

(A) Purchase from the department a motorboat lake permit under a fee scheduled approved by the commission.

(B) Affix the permit in a visible location on the port (left) side immediately following the excise tax decal or registration number.

(4) For a lake containing fewer than three hundred (300) acres, operates a motorboat only if the motorboat is either of the following:

(A) Powered by an electric trolling motor with not more than:

(i) two (2) 12-volt batteries; or

(ii) one (1) 24-volt battery.

(B) Operated on Loon Lake, Otter Lake, or Blue Grass Pit in the Blue Grass Fish and Wildlife Area at not greater than idle speed.

(5) Removes a boat from the lake before the expiration of fourteen (14) consecutive days, unless the boat is moored in an area where the department has approved mooring for a longer duration.

(6) A lake located on a DNR property administered by the division of fish and wildlife is exempted from subdivisions (2) and (3).

(h) A person must not leave a vehicle, boat, or associated equipment at a DNR property unless the person is actively engaged in the use of:

(1) a DNR property; or

(2) an adjacent:

(A) public freshwater lake; or

(B) navigable waterway.

(i) A person must not land, taxi, take off, park, or moor:

(1) an airborne human transportation device; or

(2) a motor-driven airborne device;

except at a site designated for that purpose or pursuant to a license. (*Natural Resources Commission; 312 IAC 8-2-8; filed Oct 28, 1998, 3:32 p.m.: 22 IR 741, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 555, eff Jan 1, 2000; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3715; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315; filed Sep 14, 2005, 2:45 p.m.: 29 IR 463, eff Jan 1, 2006; filed Jun 9, 2006, 3:40 p.m.: 20060705-IR-312050344FRA; filed Jun 29, 2007, 2:32 p.m.: 20070725-IR-312060333FRA; readopted filed Mar 25, 2010, 2:58 p.m.: 20100421-IR-312100037RFA; filed Aug 18, 2011, 11:38 a.m.: 20110914-IR-312100668FRA; filed Feb 6, 2012, 3:07 p.m.: 20120307-IR-312110442FRA, eff Jan 1, 2013*)